

AMENDED IN ASSEMBLY JANUARY 26, 2004

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 406

**Introduced by Assembly Member Jackson
(Coauthor: Assembly Member Pavley)**

February 14, 2003

An act to amend Sections ~~21082.1~~, 21089, and 21160 of; and to add Section 21099 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 406, as amended, Jackson. Environmental quality.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

~~CEQA requires any draft EIR, EIR, negative declaration, or mitigated negative declaration prepared pursuant to CEQA be prepared~~

~~directly by, or under contract to, a public agency, and requires the lead agency to circulate draft documents that reflect its independent judgment to appropriate state agencies and to the public for review and comments.~~

~~This bill would prohibit a person, including the project applicant or applicant's retained consultant, from submitting a draft environmental impact report, environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or part thereof, to the public agency responsible for reviewing the project. The bill would not apply the prohibition to a public agency that prepares those environmental documents for another public agency under contract, or to a project that the public agency intends to carry out itself.~~

~~(2) CEQA permits a lead agency to charge and collect a reasonable fee from a project applicant in order to recover estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project *and for procedures necessary to comply with CEQA on the project.*~~

~~This bill would specifically authorize a lead agency *also* to charge and collect a reasonable fee from the project applicant to cover the cost, including the cost of retaining environmental consultants, for preparing and reviewing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration *estimated costs incurred by the lead agency in preparing a draft environmental impact report or mitigated negative declaration.*~~

~~(3)–~~

~~(2) CEQA declares that it is the policy of the state that persons and organizations interested in a project must make available, as soon as possible, all information relevant to the significant effects of a project, alternatives to the project, and mitigation measures that substantially reduce the project's negative environmental effects.~~

~~This bill would require access to a project site that is under CEQA review to be granted to employees of, or consultants retained by, a public agency carrying out its CEQA responsibilities. The bill would prohibit a project applicant from enforcing against its consultants a confidentiality agreement that inhibits or prevents the disclosure of data and information regarding baseline environmental conditions, potential environmental impacts, potential mitigation measures, or project alternatives to the public agency or to the public. The bill would protect the project applicant's trade secrets and other specified records from disclosure to the public.~~



(4)–

~~This bill would become operative on July 1, 2004.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) *Government processes should be conducted in an as open*
4 *and accessible manner as possible.*

5 (b) In order to fulfill the purpose of the California
6 Environmental Quality Act to provide public agencies and the
7 general public with detailed and accurate information about the
8 environmental impacts of a proposed project and to identify
9 alternatives to the project or ways to mitigate or avoid the
10 environmental impacts, ~~it is essential that California~~
11 ~~Environmental Quality Act documents be prepared in a full, fair,~~
12 ~~and impartial manner.~~

13 ~~(b) Confidentiality agreements between project proponents~~
14 ~~and their consultants can impair the ability of public agencies and~~
15 ~~the general public to know and understand the potential~~
16 ~~environmental impacts of a proposed project. Therefore, it is the~~
17 ~~intent of the Legislature to restrict the use of confidentiality~~
18 ~~agreements in connection with the California Environmental~~
19 ~~Quality Act. impediments to obtaining that information should be~~
20 ~~minimized or eliminated.~~

21 SEC. 2. ~~Section 21082.1 of the Public Resources Code is~~
22 ~~amended to read:~~

23 ~~21082.1. (a) A draft environmental impact report,~~
24 ~~environmental impact report, negative declaration, or mitigated~~
25 ~~negative declaration prepared pursuant to the requirements of this~~
26 ~~division shall be prepared directly by, or under contract to, a public~~
27 ~~agency. No other person, including the project applicant or a~~
28 ~~consultant retained by the project applicant, may submit a draft~~
29 ~~environmental impact report, environmental impact report,~~
30 ~~proposed negative declaration, proposed mitigated negative~~
31 ~~declaration, or part thereof, required by this division to the public~~
32 ~~agency responsible for review of the project.~~

~~(b) Notwithstanding subdivision (a), this section is not intended to prohibit, and may not be construed as prohibiting, a public agency from preparing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration that the public agency prepares for another public agency pursuant to a contract with that public agency or for a project that the public agency intends to carry out itself.~~

~~(c) This section is not intended to prohibit, and may not be construed as prohibiting, a person from submitting information or other comments to the public agency responsible for preparing a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration required by this division.~~

~~(d) The lead agency shall do all of the following:~~

~~(1) Independently review and analyze all information, reports, and declarations required by this division, before adopting findings or conclusions.~~

~~(2) Circulate draft documents that reflect its independent judgment.~~

~~(3) As part of the adoption of a negative declaration or a mitigated negative declaration or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.~~

~~(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if one or more of the following apply:~~

~~(A) A state agency is any of the following:~~

~~(i) The lead agency.~~

~~(ii) A responsible agency.~~

~~(iii) A trustee agency.~~

~~(B) A state agency otherwise has jurisdiction by law with respect to the project.~~

~~(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.~~

~~SEC. 3.~~—Section 21089 of the Public Resources Code is amended to read:

21089. (a) A lead agency may charge and collect a reasonable fee from a person proposing a project subject to this division to cover the estimated costs incurred by the lead agency in preparing ~~and reviewing~~ a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration for the project and for ~~other related work~~ *procedures* necessary to comply with this division in connection with the project. ~~The fee may include the cost to the public agency of retaining environmental consultants.~~ Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.

(b) The Department of Fish and Game may charge and collect filing fees, as provided in Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding required under Section 21081, or any project approved under a certified regulatory program authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees required pursuant to Section 711.4 of the Fish and Game Code are paid.

~~SEC. 4.~~—

~~SEC. 3.~~ Section 21099 is added to the Public Resources Code, to read:

21099. Access to the site of a project under review pursuant to this division shall be granted to employees of, or consultants retained by, a public agency carrying out its responsibilities pursuant to this division, under the terms of, and subject to the conditions specified in, Section 65105 of the Government Code.

~~SEC. 5.~~—

~~SEC. 4.~~ Section 21160 of the Public Resources Code is amended to read:

21160. (a) Whenever a person applies to a public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information that may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment, or that may be necessary to prepare a draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration.

1 (b) If a portion of the data and information submitted
2 constitutes a ~~“trade secret”~~ *trade secrets* as defined in *subdivision*
3 *(d)* of Section 6254.7 of the Government Code or an
4 *archaeological record protected by Section 6254.10 of the*
5 *Government Code*, that portion may not be included in the draft
6 environmental impact report, environmental impact report,
7 negative declaration, or mitigated negative declaration, or
8 otherwise disclosed by a public agency. This section may not be
9 construed to prohibit the exchange of properly designated trade
10 secrets between public agencies that have lawful jurisdiction over
11 the preparation of the draft environmental impact report,
12 environmental impact report, negative declaration, or mitigated
13 negative declaration.

14 (c) (1) When a person applies to a public agency for a lease,
15 permit, license, certificate, or other entitlement for use that is
16 subject to this division, the project applicant may not enforce
17 against its own consultants a confidentiality agreement that
18 inhibits or prevents the disclosure to the public agency or, ~~except~~
19 ~~for trade secrets, as defined in Section 6254.7 of the Government~~
20 ~~Code, or records protected under Section 6254.10 of the~~
21 ~~Government Code~~, to the public of data and information regarding
22 baseline environmental conditions, potential environmental
23 impacts of the project, potential mitigation measures, or project
24 alternatives.

25 ~~SEC. 6. (a) Section 2 of this act is intended specifically to~~
26 ~~supersede the court’s decision in Friends of La Vina v. County of~~
27 ~~Los Angeles (1991) 232 Cal.App.3d 1446, that the California~~
28 ~~Environmental Quality Act (Division 13 (commencing with~~
29 ~~Section 21000) of the Public Resources Code) authorizes a project~~
30 ~~applicant to prepare, or employ others to prepare, a draft~~
31 ~~environmental impact report, environmental impact report,~~
32 ~~negative declaration, or mitigated negative declaration. Section 2~~
33 ~~of this act is not intended to affect any other part of that decision~~
34 ~~or any rights or obligations of the parties to that case or any other~~
35 ~~case decided on the basis of those decisions before the operative~~
36 ~~date of this act.~~

37 ~~(b)–~~

38 (2) *This subdivision does not require the disclosure to the*
39 *public of trade secrets as defined in subdivision (d) of Section*



1 6254.7 of the Government Code or archaeological records
2 protected by Section 6254.10 of the Government Code.

3 SEC. 5. This act is not intended to require a public agency to
4 incur additional, unreimbursed costs in instances in which it is both
5 the lead agency and the project applicant for a project under review
6 pursuant to the California Environmental Quality Act (Division 13
7 (commencing with Section 21000) of the Public Resources Code).

8 ~~SEC. 7. This act shall become operative on July 1, 2004.~~

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